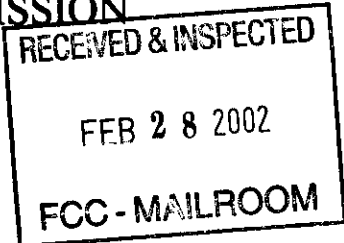


Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554



In the Matter of

Rules and Policies Concerning  
Multiple Ownership of Radio Broadcast  
Stations in Local Markets

MM Docket No. 01-317

Definition of Radio Markets

MM Docket No. 00-244

### **IRFA COMMENTS**

Hodson Broadcasting, a sole proprietorship, small business entity, formed by Richard Dean Hodson (hereafter called "Hodson"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules, respectfully submits the following "IRFA Comments" in response to the *Initial Regulatory Flexibility Analysis*.<sup>1</sup>

The *IRFA* addresses various issues including the possible significant economic impact on small entities by Commission policies and rules proposed, how diversity and competition affect the Commission's decisions on radio broadcast regulations, and the impact that industry consolidation has had on small business concerns. The Regulatory Flexibility Act (5 U.S.C. § 603) requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may,

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<sup>1</sup>See Appendix B, *NPRM FNPRM*, MM Docket Nos. 01-317/00-244. (FCC 01-329) Released November 9, 2001. The *IRFA* directed that interested parties may file comments on or before 60 days after Federal Register publication, and reply comments on or before 90 days after Federal Register publication. The Federal Register printed a synopsis of this *IRFA* on December 11, 2001 (Vol. 66, No. 238, Pgs. 63996-97). DA 02-156 (released January 23, 2002) ordered each filing period a thirty day extension. Comments are now due March 13, 2002, and reply comments by April 10, 2002. The *IRFA* further directed comments must clearly be distinguishable as *IRFA* responses. Thus, Hodson's IRFA Comments are timely and properly filed. Since Hodson's comments for this *IRFA* and the paired *NPRM* are very closely correlated, Hodson requests that the Commission consider these pleadings together when addressing either issue.

among others, include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Hodson meets the established criteria to be regarded as a small business concern as defined by the Small Business Act<sup>2</sup> and provides evidence through a brief evolution of the company. Hodson Broadcasting was first conceived as a sole proprietorship by Richard Dean Hodson in March 1997, through a Certificate of Business filed in the County of Clark, State of Nevada. In August 1997, Hodson bought a Collins ten kilowatt FM transmitter from KWLX Radio. After another 18 months of radio broadcast research, which included a FCC trip through Washington D.C., Hodson filed with the Commission for an allocation in Tecopa, California in December 1998.<sup>3</sup> Channel 29.1A was added to the FM Table of Allotments for the community of Tecopa effective August 1999.<sup>4</sup> In the interim, Hodson registered with the City of Las Vegas in April 1999 for a home-based broadcast business and was issued a license. In February 2000, the Clark County Board of County Commissions approved Hodson for a two-year construction permit to develop family property located in Sandy Valley, Nevada, as a studio site for broadcast operations. Because of federal regulatory delays beyond Hodson's control, an Extension of Time application has recently been filed with Clark County on the above permit decision. As of February 16, 2002, Hodson *continually prays* and patiently awaits for FCC action which involves opening the FM

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<sup>2</sup>Hodson is independently owned and operated, not dominant in its field of operation, and satisfies any and all additional SBA criteria. It should be strongly noted that the current Small Business Administration code defining a radio broadcasting station that has \$5 million or less in annual receipts as a small business needs modification to \$3 million or less to more accurately reflect realities.

<sup>3</sup>MM Docket No. 99-46, RM-9470, 14 FCC Rcd 2829 (1999).

<sup>4</sup>*Report and Order* (DA 99-1375), released July 16, 1999.

Broadcast Auction filing window, already postponed on several occasions, for all vacant allotments, including the Tecopa allocation, approved over two and a half years ago via Hodson's Petition for Rulemaking.

Diversity and competition issues must continually affect the Commission's decisions on radio broadcast regulations, as these two factors are currently regarded as the remaining foundation that historically embodies and motivates the "public welfare" principle contained in the Communications Act of 1934. In 1943<sup>5</sup>, The Supreme Court reaffirmed the Federal Communications Commission's public duty as spectrum mediator and broadcast equality enforcer by stating:

"...We regard the Commission as a kind of traffic officer, policing the wavelengths to prevent stations from interfering with each other. But the Act (of 1934) does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic...We come, finally, to an appeal to the First Amendment. The Regulations, even if valid in all other respects, must fail because they abridge, say the appellants, their right of free speech. If that be so, it would follow that every person whose application for a license to operate a station is denied by the Commission is thereby denied his constitutional right of free speech. Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation.

This judicial decision became a Commission policy precedent for many years. The Chain Broadcasting Regulations of 1941 spawned network competition with the American Broadcasting Company created from the Blue Network, providing a classic lesson in how divestiture can promote various classifications of diversity-source, outlet,

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<sup>5</sup>*National Broadcasting Company v. United States*, 319 U.S. 190 (1943). See also 316 U.S. 407 (1942)

and viewpoint. In the early 1970's, "fin-syn" and PTAR regulations encouraged television programming competition and diversity in an era before satellite and cable penetration revolutionized the medium.

Although many communication advancements have materialized in general over the last twenty years, basic FM commercial radio broadcasting theory, when viewed by itself, has remained intact since its inception. Television has evolved from black and white to color, from analog to digital, and from over-the-air to cable and satellite delivery methods. Each step along this TV evolution has historically provided opportunity hybrids for businesses and broadcasters alike within the industry, and general public benefits in the form of clearer and wider reception outside the industry. Television was offered UHF for many years to provide spectrum availability, as was the expanded band for AM. However, FM was never granted the same status, yet demand increased over a hundredfold for these very valuable Channels. Cable or Internet delivered radio lacks portability and satellite radio neglects interactive localism that only aural broadcasts can deliver. User confidence in newly developed digital audio radio services is weak due to automobile manufacturer's reluctance to provide the receiving equipment standard at the factory, plus multiple consumer dissatisfaction issues arise not only in paying for conversion of current receiver, but then an additional monthly subscription fee for *each vehicle* the service is installed. In order for this technology to flourish, better service incentives and settlement of certain terrain shadowing issues need to be addressed in an expedient manner for survival. Low Power FM is only a possible solution for non-profit broadcasting concerns, provided its interference particulars can be resolved, and does not address the small commercial broadcasters concerns of high market entry barriers for newcomers, apathy of incumbent broadcasters on community of license issues and affairs, and reluctance to program diversified formats for the public audience in which licensees are responsible to serve.

Because Hodson's *sole mission* in life is to develop and construct an FM broadcast operation, evaluating economic and other impacts from Commission policy and regulation on Hodson's endeavor is refreshing. Small business "concerns",

whether profit or non, have many similar company issues as do larger, highly capitalized, organizations. A stumbling block for most small, private enterprise is financial assets, as it is rarely generated through stock options and public trading, but through private and personal capital. For Hodson, that capital does not exceed the six-figure threshold. Even in overcoming very high barriers for market entry, such as inflated selling prices due to consolidation or spectrum scarcity, especially in the FM commercial band with only 80 non-reserved channels available nationwide, a broadcast entrepreneur still has only two options: buy or build. The current status of many radio markets within the top 100 prohibits new entrants to participate in purchasing an existing broadcast facility, particularly if that entity's capital is less than \$100,000. The construction option within the top 100 radio markets is also riddled with adversity. The lack of spectrum availability in most medium to major radio markets consistently limit and force new broadcast entities to select communities that are usually a minimum of 40 miles or more distant from the market in which they wish to serve. If a start-up business is fortunate enough to have found an area worthy of a new allocation, the distance from market factor usually results in not enough signal strength or advertising revenue to support a fledging radio broadcast operation.

There is also a very distinct division between small "not for profit" broadcast organizations and smaller commercial broadcast ventures, such as sole proprietorships or partnerships. Religious, educational and other noncommercial broadcast entities have historically always received preferential Commission policy provisions not entitled to their commercial counterparts. Several examples include non-profits not being subject to multiple ownership limitations or competitive auction bidding regulations, plus the entire reserved FM band design and recent Low Power FM developments.

Digressing momentarily, the Commission is fully aware of various obstacles facing FM allocation petitioners, including satisfying minimum distance regulations, proving community status, and a scrutinizing public comment window. Hodson has overcome these barriers to entry as documented, but is far from meeting its divine calling. Because of the Commission's competitive bidding principle superseding

comparative hearing procedures, Hodson must wait, along with approximately 360 other interested parties, for an opportunity to bid on their hard-earned allocations. What is such a shame is when a petitioner struggles *so hard* and sacrifices *so much* for *so many* years, yet after all that effort and energy, the primary party of interest for a particular allocation is no closer to gaining channel privileges or constructing authority than they were at the onset of their broadcast project. In Hodson's case, the initial decision to build over buy was originally first envisioned in 1990, over *twelve years* ago!

Hodson understands that after several Public Notices<sup>6</sup> announcing an FM Broadcast Auction schedule, each date specified was vacated, with the last postponement notice void of new datelines. The latter notice's explanation was due to an appealed National Public Radio concern involving non-profit entities competing with regular businesses for FM commercial spectrum. The Commission's concern that every auction allocation is potentially impacted is not substantiated. Why? Because an auction application window has *never* actually been opened to determine which markets a non-profit entity may want to enter. When the Commission finally and truly decides to accept auction participant applications and open the long overdue filing window, it can readily conclude which markets have a non-profit entity involved. Market "singletons", whether commercial or non, can also be identified simultaneously, which would be in their communities best public interest, as these allocations would bypass bidding and move to construction permit application procedures, hopefully hastening certain remote areas receiving a first broadcast outlet, such as Tecopa, California. Those mutually exclusive allocation markets that do not have a noncommercial issue, can then be scheduled for auction and competitive bidding procedures. Only those contested allocations determined to have a non-profit applicant involved would be set aside for processing in a comparative manner consistent with the FM reserved band.

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<sup>6</sup>See Public Notices: DA 00-2171 (released September 25, 2000); DA 01-119 (released January 19, 2001); DA 01-619 (released March 7, 2001); DA 01-2148 (released September 14, 2001)

Hodson earnestly recommends certain changes concerning the Commission's broadcast auction procedures and ways to restructure these regulations to assist and enable small, start-up broadcast businesses to effectively compete. First, modifying the New Entrant Bidding Credits from its current 25/35 percentile to a 30/45 percentile ratio would be quite beneficial for first-time, no media interests broadcasters, which better defines and serves the Bidding Credit's intention. Another similar modification would be in the proposed 30% tier. Instead of attributable interest in no more than three mass media facilities nationwide, the level would change to five, with the condition that the winning bidder also has no attributable interest or broadcast presence already in the market the allocation is intended to serve to qualify. For those first time entities that are entitled to the restructured upper 45% tier, allowing a less restrictive payment plan for the bid balance may also reduce entry barriers for beginning broadcast owners. For instance, if a new entrant's winning bid totaled \$500,000 dollars, a Bidding Credit of \$225,000 would be deducted. This bidder initially prepaid a hypothetical minimum opening bid amount of \$25,000. This amount is also deducted, after the Bidding Credit, leaving a balance of \$250,000. Twenty percent of the balance would be due before approval of a construction permit application is issued, in this case \$50,000 dollars. The remaining figure would be credited under a five-year payment plan, from the date of license application approval, for only the modified, new entrant 45% tier, resulting in the example case of \$40,000 plus competitive interest annually added to the Commission's budget. This feasible post-auction proposition allows smaller, first-time, broadcast business entities to compete when facing immediate construction costs to commence broadcast and general business operations.

In conclusion, Hodson provides practical answers to the Commission's inquiries with reasonable alternatives to remedy the various issues that the Initial Regulatory Flexibility Analysis addresses. Significant economic and general impact on small business concerns by Commission policies and rules proposed can be dramatically minimized by hastening procedural procrastination and expediting lengthy delays on matters before the Commission that are pending after several years. A fair and equitable distribution of individual broadcast licences according to the public interest,

convenience, and necessity is still viable in an ever-evolving, fast-paced, technological generation by heeding Hodson's alternate suggestions concerning national and local broadcast ownership limits, redefining radio markets to more accurately reflect signals actually receivable within a geographic region, divestiture provisions for offending licensees, and increased competitive bidding assistance to auction participants that are classified broadcast newcomers. Never before in radio history has the Commission conscientiously allowed a single group, like Clear Channel, to control over 1,000 individual commercial broadcast licenses, especially considering general radio spectrum scarcity makes the broadcasting field quasi-monopolistic by nature and thus prohibits unlimited competition within any particular market. The tremendous impact that radio industry amalgamation has had over the last decade on (sm)all businesses was interestingly summed up from Commissioner Susan Ness's recent quote, "...with the horse of consolidation galloping over the horizon." Since that be the case, then it's about time to "*Corral* that giant broncin' buck, Commissioner!"

Respectfully submitted,

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